

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 304

Introduced by Assembly Member Williams

February 12, 2013

An act to amend Sections 14022, 14023, and 14024 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 304, as amended, Williams. Pesticides: toxic air contaminant: control measures.

(1) Existing law requires the Director of Pesticide Regulation, upon completion of an evaluation of a pesticide, to prepare a report on the health effects of any pesticide determined to be a toxic air contaminant that poses a present or potential hazard to human health due to airborne emission from its use, as specified. Existing law requires this report to be made available to the public, as specified. Existing law also requires the director to determine, in consultation with specified agencies, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant.

This bill would require the *director's* written determination regarding control measures for each ~~such~~ pesticide and ~~all findings~~ *any formal written comments* made by consulting agencies be made available to the public. *The bill, for each pesticide for which a risk assessment has been completed that has been identified by the director as a toxic air contaminant and federally identified as a hazardous air pollutant, would require the director, in consultation with the Office of Environmental Health Hazard Assessment, the State Air Resources Board, and the air pollution control or air quality management districts in the affected*

counties, to determine the need for and appropriate degree of control measures, as specified. The bill would require the director's written determination and any formal written comments made by consulting agencies in regard to control measures for these pesticides to be made available to the public.

(2) Existing law requires, for those pesticides for which a need for control measures has been determined, the director, in consultation with specified agencies, to develop control measures designed to reduce emissions sufficiently so the source will not expose the public to the levels of exposure that may cause or contribute to significant adverse health effects. Existing law requires, after a public hearing, the director to adopt, by regulation, control measures, including application of the best practicable control techniques for those pesticides for which a need has been determined.

~~This bill would include pesticides identified by the director as toxic air contaminants within the list of pesticides for which the director is required to develop control measures, as specified above.~~

~~This bill would further require the director to follow specified consultation procedures and would require the director, within 2 years of the determination of the need for control measures or following a risk assessment of a pesticide identified as a toxic air contaminant, as specified, to adopt control measures to protect human health or report to the appropriate committees of the Legislature why control measures have not been adopted. The bill, if the director is unable to adopt control measures to protect human health within 2 years of the determination of the need for control measures, would require the director to submit a specified report to the appropriate committees of the Legislature setting forth the reasons that requirement has not been met and to update that report, as specified. The bill would require, with respect to any pesticide for which a determination of the need for control measures was made before to January 1, 2014, that the 2-year period described above commence on January 1, 2014.~~

~~This~~

(3) *This* bill also would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14022 of the Food and Agricultural Code
2 is amended to read:

3 14022. (a) In consultation with the Office of Environmental
4 Health Hazard Assessment and the State Air Resources Board, the
5 director shall evaluate the health effects of pesticides that may be
6 or are emitted into the ambient air of California and that may be
7 determined to be a toxic air contaminant that poses a present or
8 potential hazard to human health. Upon request of the State Air
9 Resources Board, the director shall include a pesticide for
10 evaluation.

11 (b) The director shall complete the evaluation of a pesticide
12 within 90 days after receiving the scientific data specified in
13 subdivision (c) from the Office of Environmental Health Hazard
14 Assessment and the State Air Resources Board. The director may
15 extend the 90-day deadline for a period not to exceed 30 days if
16 the director transmits to the Assembly Committee on Rules and
17 the Senate Committee on Rules, for transmittal to the appropriate
18 standing, select, or joint committee of the Legislature, a statement
19 of reasons for extension of the deadline.

20 (c) In conducting this evaluation, the director shall consider all
21 available scientific data, including, but not limited to, relevant data
22 provided by the Office of Environmental Health Hazard
23 Assessment, the Occupational Safety and Health Division of the
24 Department of Industrial Relations, international and federal health
25 agencies, private industry, academic researchers, and public health
26 and environmental organizations. At the request of the director,
27 the State Air Resources Board shall document the level of airborne
28 emissions and the Office of Environmental Health Hazard
29 Assessment shall provide an assessment of related health effects
30 of pesticides that may be determined to pose a present or potential
31 hazard and each agency shall provide technical assistance to the
32 department as it conducts its evaluation.

33 (d) The director may request, and any person shall provide,
34 information on any substance that is or may be under evaluation
35 and that is manufactured, distributed, or used by the person to
36 whom the request is made, in order to carry out his or her
37 responsibilities pursuant to this chapter. Any person providing
38 information pursuant to this subdivision shall identify, at the

1 request of the director, that portion of the information submitted
2 to the department that is a trade secret and, upon the request of the
3 director, shall provide documentation to support the claim of the
4 trade secret. Information supplied that is a trade secret, as specified
5 in Section 6254.7 of the Government Code, and that is so marked
6 at the time of submission shall not be released to the public by the
7 director, except in accordance with Section 1060 of the Evidence
8 Code and Section 21160 of the Public Resources Code.

9 (e) The director shall give priority to the evaluation and
10 regulation of substances based on factors related to the risk of harm
11 to public health, amount or potential amount of emissions, manner
12 of usage of the pesticide in California, persistence in the
13 atmosphere, and ambient concentrations in the community.

14 SEC. 2. Section 14023 of the Food and Agricultural Code is
15 amended to read:

16 14023. (a) Upon completion of the evaluation conducted
17 pursuant to Section 14022, the director shall, in consultation and
18 with the participation of the Office of Environmental Health Hazard
19 Assessment, prepare a report on the health effects of the pesticide
20 that may be determined to be a toxic air contaminant that poses a
21 present or potential hazard to human health due to airborne
22 emission from its use. The report shall assess the availability and
23 quality of data on health effects, including potency, mode of action,
24 and other relevant biological factors, of the substance. The report
25 shall also contain an estimate of the levels of exposure that may
26 cause or contribute to adverse health effects and, in the case where
27 there is no threshold of significant adverse health effects, the range
28 of risk to humans, resulting from current or anticipated exposure.
29 The report shall include the findings of the Office of Environmental
30 Health Hazard Assessment. The report shall be made available to
31 the public, subject to subdivision (d) of Section 14022.

32 (b) The report prepared pursuant to subdivision (a) shall be
33 formally reviewed by the scientific review panel established
34 according to Section 39670 of the Health and Safety Code. The
35 director shall also make available the data deemed necessary to
36 the scientific review panel, according to departmental procedures
37 established to ensure confidentiality of proprietary information.
38 The panel shall review, as appropriate, the scientific data on which
39 the report is based, the scientific procedures and methods used to
40 support the data, and the conclusions and assessments on which

1 the report is based. The panel shall submit its written findings to
2 the director within 45 days after receiving the report, but it may
3 petition the director for an extension of the deadline, which may
4 not exceed 15 working days.

5 (c) If the scientific review panel determines that the health
6 effects report is seriously deficient, the report shall be returned to
7 the director who shall revise and resubmit the report, within 30
8 days following receipt of the panel's determination, to the panel
9 before development of emission control measures.

10 (d) Within 10 working days following receipt of the findings
11 of the scientific review panel pursuant to subdivision (b), the
12 director shall prepare a hearing notice and a proposed regulation
13 that shall include the proposed determination as to whether a
14 pesticide is a toxic air contaminant. After conducting a public
15 hearing pursuant to Chapter 3.5 (commencing with Section 11340)
16 of Part 1 of Division 3 of Title 2 of the Government Code, the
17 director shall list, by regulation, pesticides determined to be toxic
18 air contaminants.

19 (e) The director shall determine, in consultation with the Office
20 of Environmental Health Hazard Assessment, the State Air
21 Resources Board, and the air pollution control districts or air
22 quality management districts in the affected counties, the need for
23 and appropriate degree of control measures for each pesticide listed
24 as a toxic air contaminant pursuant to subdivision (d). Any person
25 may submit written information for consideration by the director
26 in making determinations on control measures. The *director's*
27 ~~written determination and all findings~~ *any formal written comments*
28 made by the consulting agencies shall be made available to the
29 public.

30 (f) *For each pesticide identified by the director as a toxic air*
31 *contaminant, as defined in subdivision (b) of Section 14021,*
32 *pursuant to Section 7412 of Title 42 of the United State Code for*
33 *which a risk assessment has been completed, the director, in*
34 *consultation with the Office of Environmental Health Hazard*
35 *Assessment, the State Air Resources Board, and the air pollution*
36 *control or air quality management districts in the affected counties,*
37 *shall determine the need for and appropriate degree of control*
38 *measures. Any person may submit written information for*
39 *consideration by the director in making determinations on control*
40 *measures. The director's written determination and any formal*

1 *written comments made by the consulting agencies shall be made*
2 *available to the public.*

3 SEC. 3. Section 14024 of the Food and Agricultural Code is
4 amended to read:

5 14024. (a) ~~For pesticides identified by the director as toxic air~~
6 ~~contaminants, as described in subdivision (b) of Section 14021,~~
7 ~~and for those pesticides for which a need for control measures has~~
8 ~~been determined pursuant to subdivision (e) or (f) of Section 14023~~
9 ~~and pursuant to provisions of this code, the director, in consultation~~
10 ~~with the agricultural commissioners, air pollution control districts,~~
11 ~~and air quality management districts in the affected counties, shall~~
12 ~~develop control measures designed to reduce emissions sufficiently~~
13 ~~so that the source will not expose the public to the levels of~~
14 ~~exposure that may cause or contribute to significant adverse health~~
15 ~~effects. If no demonstrable safe level or threshold of significant~~
16 ~~adverse health effects has been established by the director, the~~
17 ~~control measures shall be designed to adequately prevent an~~
18 ~~endangerment of public health through the application of best~~
19 ~~practicable control techniques.~~

20 (b) Best practicable control techniques may include, but are not
21 limited to, the following:

- 22 (1) Label amendments.
- 23 (2) Applicator training.
- 24 (3) Restrictions on use patterns or locations.
- 25 (4) Changes in application procedures.
- 26 (5) Reclassification as a restricted material.
- 27 (6) Cancellation.

28 (c) (1) The director shall follow the consultation procedures
29 set forth in subdivision (a) and, within two years of the
30 determination of the need for control measures pursuant to
31 subdivision (e) or (f) of Section 14023 ~~or following a risk~~
32 ~~assessment of a pesticide identified as a toxic air contaminant~~
33 ~~pursuant to Section 14021, shall adopt control measures to protect~~
34 ~~human health or submit a report to the appropriate committees of~~
35 ~~the Legislature setting forth the reasons that this requirement has~~
36 ~~not been met.~~

37 (2) (A) *If the director is unable to adopt control measures to*
38 *protect human health within two years of the determination of the*
39 *need for control measures pursuant to paragraph (1), the director*
40 *shall submit a report to the appropriate committees of the*

1 *Legislature setting forth the reasons this requirement has not been*
2 *met.*

3 *(B) The director shall update the report submitted to the*
4 *appropriate committees of the Legislature pursuant to*
5 *subparagraph (A) every two years until the control measures have*
6 *been adopted.*

7 *(C) If the registration for the use of a particular pesticide is*
8 *rescinded or if the director determines there has been a dramatic*
9 *decline in the use of a particular pesticide so that control measures*
10 *for that particular pesticide are no longer needed, the director*
11 *shall include this information in the report submitted to the*
12 *appropriate committees of the Legislature pursuant to*
13 *subparagraph (A) and the director's obligations pursuant to*
14 *paragraph (1) shall be deemed to have been met.*

15 ~~(2) Reports submitted pursuant to this subdivision shall be~~
16 ~~submitted in compliance with Section 9795 of the Government~~
17 ~~Code.~~

18 (d) For purposes of this section, with respect to any pesticide
19 for which a determination of the need for control measures was
20 made before to January 1, 2014, the two-year period described in
21 subdivision (c) shall commence on January 1, 2014.

22 (e) After conducting a public hearing pursuant to Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code, the director shall adopt, by regulation,
25 control measures, including application of the best practicable
26 control techniques enumerated in subdivision (b) or any other best
27 applicable control technique, for those pesticides for which a need
28 has been determined.